



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

September 22, 2015

The Honorable Greg Walden
U.S. House of Representatives
2182 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Walden:

Thank you for your letter concerning the impact of the upcoming incentive auction on low power TV (LPTV) stations and translators.

I agree that LPTV stations and TV translators provide important services upon which many consumers and businesses in rural communities rely. Although, as you note, the Middle Class Tax Relief and Job Creation Act of 2012 ("Spectrum Act") does not explicitly protect LPTV and translators in the repacking process, the Commission is taking an array of steps to help ensure that as many of these stations as possible remain on the air so that the important programming content they provide continues to reach viewers.

As an initial matter, the Commission last year announced that it will open a special filing window for operating LPTV and TV translator stations that are displaced by the repacking and reallocation of the television bands.¹ We also modified our rules to allow stations with mutually exclusive displacement applications to reach a settlement or an engineering solution, rather than require competing stations to resolve all mutual exclusivity through an auction as the Communications Act generally requires.² In cases where a settlement is not possible, in order to ensure the continued availability of full power television service, we afforded priority to displacement applications filed by digital replacement translators used to fill in the service areas of full power stations that could not otherwise be replicated when those stations transitioned from analog to digital facilities.

Additionally, to help accommodate some of the needs of LPTV and translator stations following the auction, the Commission adopted rules that will permit these stations to remain on their existing channels during the post-auction transition period until they are notified that a forward auction winner is within 120 days of commencing operations on the repurposed 600 MHz spectrum. For many LPTV and translator stations that are located in the new 600 MHz Band, this could mean continued operations for many years until wireless licensees commence operations.

Recognizing the importance of LPTV and translator stations, the Commission also opened a dedicated proceeding to consider additional means to mitigate the potential impact of

¹ See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567, 6834-35, para. 657 (2014) ("*Incentive Auction Report & Order*").

² *Id.*, para. 661.

the incentive auction and the repacking process on LPTV and TV translator stations to help preserve the important services they provide.³ I expect that the Commission will act on the proposals put forward in this proceeding later this fall. Those proposals include a range of options to help enable LPTV and TV translator stations remain on the air. First, we have proposed allowing LPTV stations to share channels. Channel sharing arrangements will facilitate the continued viability of LPTV through new programming and business arrangements and promote spectral efficiency.⁴ Second, in response to concerns that finding a new channel for displaced LPTV and TV translator stations will be challenging, we also proposed making our auction repacking software available to LPTV and translator stations to identify available channels and potentially maximize the number of such stations in the TV band post-auction.⁵ Of course, a station's decision to seek channel assignments recommended by the optimization software would be completely voluntary, but I believe that the availability of our software will expedite and ease the post-auction transition process for many low power stations.

While the auction will by definition result in a smaller TV band and therefore fewer channels for all television stations – full power as well as LPTV and translators – the steps I have described above will help ensure the continued availability of LPTV and translator services post-auction.

Just as we are seeking to preserve and facilitate the transition for LPTV and TV translator stations, we are seeking to do the same for white space devices and wireless microphones that will also be displaced by the reorganization of the 600 MHz Band. That is the genesis of our proposal to preserve a vacant channel in every area for use by white space devices and wireless microphones.⁶ This proposal is aimed at ensuring that the public continues to have access across the nation to the significant benefits of these services, consistent with our intent to strike “a balance between the interests of all users of the television bands, including secondary broadcast stations as well as [white space] devices and wireless microphones, for access to the UHF TV spectrum.”⁷

The Commission believes that the proposal to preserve a vacant channel will not significantly burden LPTV and TV translator stations in terms of either the continued availability of channels in all areas or the administrative burdens of compliance. The impact on LPTV and

³ *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, MB Docket No. 03-185, Third Notice of Proposed Rulemaking, FCC 14-151 (rel. Oct. 10, 2014) (“*LPTV NPRM*”).

⁴ *LPTV NPRM*, para. 14.

⁵ *Id.*, para. 44 et seq.

⁶ *Amendment of Parts 15, 73 and 74 of the Commission's Rules to Provide for the Preservation of One Vacant Channel in the UHF Television Band for Use by White Space Devices and Wireless Microphones*, MB Docket No. 15-146, Notice of Proposed Rulemaking, FCC 15-68 (rel. June 16, 2015) (“*Vacant Channel NPRM*”).

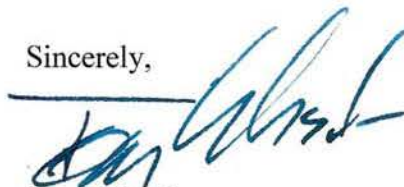
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TV translator stations in terms of the availability of channels for future use will be limited because multiple vacant channels will still exist in all or most markets as a consequence of the need to avoid interference between primary broadcast stations in the incentive auction final channel assignment process. The effect of our proposal would be to reduce by one (or two in the handful of markets where a TV station may be assigned to the duplex gap) the total number of vacant channels that would otherwise be available in an area.

Finally, I believe our proposal to preserve vacant channels for use by white space devices and wireless microphones in all areas is fully authorized by law. The Commission has broad authority to manage spectrum in the public interest, which was not affected by the Spectrum Act.⁸ Our proposal is within that existing authority, and ensures that the public does not lose access to the significant benefits of wireless microphones and white space devices. Importantly, our vacant channel proposal addresses use of the TV band; it does not involve the spectrum reclaimed through the auction. Unlicensed use of the reclaimed spectrum will be limited to the guard bands, as permitted by the Spectrum Act. It is through this mix of frequencies that we appropriately seek, as I noted in my recent blog post, to “maximize the amount of spectrum made available for not only licensed use, but also unlicensed use.”⁹ I would note that this proposal remains open for comment, and I expect a robust record on both sides of the issue. The Commission will, of course, consider the record carefully before making a final decision.

Thank you for the opportunity to address these important issues. I share your goal of preserving a healthy LPTV and translator industry, and we are committed to policies to achieve that goal while also meeting the public’s growing demand for unlicensed spectrum. I believe the Commission’s course strikes the appropriate balance between providing the necessary flexibility for a successful auction and preserving spectrum for all services.

Sincerely,



Tom Wheeler

⁸ Title III of the Communications Act of 1934, as amended, “endow[s] the Commission with expansive powers,” including “broad authority to manage spectrum . . . in the public interest.” 47 U.S.C. §§ 301, *et seq.*; *Cellco P’ship v. FCC*, 700 F.3d 534, 541, 542 (D.C. Cir. 2012) (internal quotes and citations omitted); Spectrum Act at § 6403(i)(1) (stating that nothing in section 6403(b) “shall be construed to . . . expand or contract the authority of the Commission, except as expressly provided”).

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The Honorable Joe L. Barton
U.S. House of Representatives
2107 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Barton:

Thank you for your letter concerning the impact of the upcoming incentive auction on low power TV (LPTV) stations and translators.

I agree that LPTV stations and TV translators provide important services upon which many consumers and businesses in rural communities rely. Although, as you note, the Middle Class Tax Relief and Job Creation Act of 2012 ("Spectrum Act") does not explicitly protect LPTV and translators in the repacking process, the Commission is taking an array of steps to help ensure that as many of these stations as possible remain on the air so that the important programming content they provide continues to reach viewers.

As an initial matter, the Commission last year announced that it will open a special filing window for operating LPTV and TV translator stations that are displaced by the repacking and reallocation of the television bands.¹ We also modified our rules to allow stations with mutually exclusive displacement applications to reach a settlement or an engineering solution, rather than require competing stations to resolve all mutual exclusivity through an auction as the Communications Act generally requires.² In cases where a settlement is not possible, in order to ensure the continued availability of full power television service, we afforded priority to displacement applications filed by digital replacement translators used to fill in the service areas of full power stations that could not otherwise be replicated when those stations transitioned from analog to digital facilities.

Additionally, to help accommodate some of the needs of LPTV and translator stations following the auction, the Commission adopted rules that will permit these stations to remain on their existing channels during the post-auction transition period until they are notified that a forward auction winner is within 120 days of commencing operations on the repurposed 600 MHz spectrum. For many LPTV and translator stations that are located in the new 600 MHz Band, this could mean continued operations for many years until wireless licensees commence operations.

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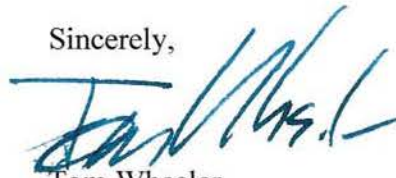
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